**HON'BLE SRI JUSTICE BILAL NAZKI**
**AND**
**HON'BLE SRI JUSTICE S. ANANDA REDDY**

**WRIT PETITION No.15152 of 2007**

Date:17-07-2007.

Between :

M/s.Carlton Industrial Engineers, Kakinada,
rep. by its Proprietor.

.....Petitioner

And

The Commercial Tax Officer, Kakinada & another.

.....Respondents.

For petitioner : Sri Bhaskar Reddy Vemireddy, Advocate

For respondents : G.P. for Commercial Taxes

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> Head Note:

? CITATIONS:

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**ORDER** : (Per Hon'ble Sri Justice Bilal Nazki)

Heard learned counsel for the parties and with their consent, the writ petition is disposed of at this stage.

Petitioner is aggrieved of an order, dated 06.07.2007 attaching his amounts in various banks. This order, according to him, is a consequence to an order dated 29.06.2007, by which, penalty was imposed on the petitioner. This order of penalty is also challenged in the writ petition. In the order imposing penalty, the petitioner was asked to remit the amounts within one month from the date of service of the order, but within one week of passing of that order, the attachment order was passed.

The learned counsel for petitioner submits that after an assessment is made or an order of penalty is passed, there is no power with the authorities to pass an order of attachment.

Attachment can only be made in terms of Section 27 (2) (a) of the A.P.Value Added Tax Act, 2005 (for short 'the Act'), which reads as under—

> *"Where, during the pendency of any proceeding for the assessment or reassessment of any tax or turnover tax which has escaped assessment, the authority prescribed is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, may with the previous approval of the Commissioner, by order in writing, attach provisionally in the prescribed manner any property belonging to the dealer.*

The provision is clear that the property can only be attached when the prescribed authority is of the opinion that for the purpose of protecting the interest of revenue it is necessary so to do during the pendency of any proceedings for assessment or reassessment. In the present case, there was no assessment or reassessment or even no proceeding related to imposition of penalty was pending as on 06.07.2007. The learned Government Pleader has drawn our attention to Section 29 of the Act, to submit that the revenue had the power to order an attachment. But Section 29 operates altogether in a different field. It is after the assessment when recoveries

can be made from third parties. Therefore, in our view, the order of attachment is bad and cannot be sustained.

Now coming to the main order imposing penalty, the learned counsel for petitioner submits that the objections filed by him had not been considered and the request made for personal hearing has also not been conceded to, nor any reference has been made to such a request although the communication sent by the petitioner seeking personal hearing in the first week of July has been referred to in the order. We feel, these matters can at best be considered by the appellate authority, as the remedy of appeal is available to the petitioner.

For these reasons, the writ petition is allowed partly as mentioned hereinabove and the petitioner is at liberty to seek the remedy of appeal which is available to him in law against the order imposing penalty.

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BILAL NAZKI, J

17th July 2007

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S. ANANDA REDDY, J

**N.B**:
L.R. copies to be marked.

(b/o)

ajr